

**Testimony Regarding House Bill 4554
to the
House Natural Resources, Tourism, and Outdoor Recreation Committee
Representative Frank Foster, Chair**

Submitted by
Jennifer McKay, Policy Specialist
Tip of the Mitt Watershed Council
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Introduction

Thank you for the opportunity to present testimony today regarding House Bill 4554 introduced by Representative MacMaster.

I am pleased to submit testimony on behalf of the board, staff, and over 2,300 members of the Tip of the Mitt Watershed Council.

As a means of introduction, the Tip of the Mitt Watershed Council was founded in 1979, the same year Michigan's wetland act was passed. The Watershed Council is a nonprofit organization whose purpose is to protect, restore, and enhance water resources, including inland lakes, rivers, wetlands, groundwater, and the Great Lakes shoreline. We base all our programs on sound science and policy analysis, and have garnered respect for our work from local, state, and federal agencies, businesses, fellow environmental organizations, and citizens.

Great Lakes versus Inland Lakes

The Great Lakes and Inland Lakes are very different in nature. Great Lakes are influenced by large lake processes including waves, wind-driven "tides" or seiches, and especially the seasonal and long-term fluctuations of Great Lakes water levels. Additionally, governance and ownership of the Great Lakes and inland lakes varies. The ordinary high water mark and riparian rights are different for these two ecosystems. Given these differences, it is not appropriate to incorporate inland lakes and streams into an Act that governs the Great Lakes and Great Lakes activities.

Unnecessary Legislation for Inland Lakes and Streams

On inland lakes and streams the recovery of logs is a regulated activity under the Part 301, Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The recovery of logs from inland waters must be authorized by a State permit. Since the recovery of logs is already regulated by the state on both the Great Lakes and inland lakes and streams, House Bill 4554 is not needed. Should changes wish to be made address submerged log recovery in inland lakes and streams, it would be more appropriate to be included within Part 301, Inland Lakes and Streams Act.

Negative Impacts of Submerged Log Removal

According to the DNR Fisheries, although studies evaluating log salvage are limited, evidence does suggest that log salvaging may negatively affect aquatic habitats and fish communities. Detrimental effects are caused by the removal of woody habitat used for cover and macroinvertebrate food production, the alteration of substrates and sensitive habitat, increase of suspended sediment and turbidity, and potential disturbance or contaminated sediments. Log salvage can also disturb lake and stream bottom which can suspend sediment, affect water quality, result in a loss of structural habitat, induce behavioral effects on fishes, and alter substrates used by macroinvertebrates. In addition, the removal of logs from shallow areas can be detrimental to a large number of species which rely on woody structures in shallow waters for spawning and nursery habitat and cover.

The Interest of Submerged Log Recovery in Michigan

While permits can be obtained for log recovery on inland lakes and streams, it is important to note the new log recovery permits on the Great Lakes were not issued after December 31, 2003. While permits were allowed in the Great Lakes, the Department issued a total of 12 permits. This signifies that even when the activity was allowed, it was not highly used in the state. Therefore, it does not seem that legislation pertaining to submerged log recovery is necessary on the Great Lakes either.

Assessment of HB 4554

After reviewing HG 4554, Tip of the Mitt Watershed Council recommends the following:

- Keep “as described in section 32502” to define to the ordinary high water mark for the Great Lakes – we need to maintain consistency among all statutes in order to make it easier for the public, applicants, and staff to understand the regulations.
- Remove inland lakes and stream references – log recovery is already covered under Part 301, Inland Lakes and Streams, and any changes should be addressed that Part.
- “Reasonable” – what constitutes reasonable? This terminology is likely to pose more problems with its addition than it is going to be of help to applicants or staff in the interpretation of the law or in implementation of the permitting.
- Fees - need to be discussed. As General Funds continue to be decimated for the Department, the Department must look elsewhere to find funding to uphold the state’s constitution and administering laws that regulate activities in Michigan’s most treasured natural resources. While I recognize that many applicants do not want to pay the fees, this is currently the only form of income for the Department after the continual onslaught of budget cuts by the Legislature. Fees should stay the same at a minimum or be increased.
- Automatic Approval – The provision authorizing the automatic approval of the permit should the DEQ not respond within the required time period needs to be removed. The DEQ Water Resource Division (WRD) is highly understaffed and overworked. The Department of Environmental Quality has seen state general fund support erode from a high of over \$101 million in FY 2002 to \$44.4 million

in FY 2009, representing a 68 percent reduction in general fund support. Shamefully, Michigan ranks 47th out of the 48 contiguous states for conservation and environmental protection efforts on a per capita spending basis, according to a report by the Land Policy Institute at Michigan State University. While the staff do their best to meet all the timelines put forth for the various permits they issue, there are times when due to budgetary reasons, they are unable to meet the deadline. However, an automatic approval because of a legislative decision could result in significant adverse impacts to the aquatic habitat and this is unacceptable.

- Science to support the Denial of a Permit – There is already a separate bill that requires the DEQ to do this. Therefore, this is extraneous and not necessary.
- Economic Impact Fiscal Analysis - requiring the DEQ to provide an “economic impact fiscal analysis” is ridiculous. First of all, the Michigan Department of Environment Quality is the key agency responsible to the people of Michigan for upholding the state’s constitution and administering laws that regulate activities in Michigan’s most treasured natural resources. This includes the Great Lakes, holding nearly 20% of the planet's fresh surface water, the high quality inland lakes, expansive forests, blue-ribbon trout streams, prairies, bogs, and the largest freshwater coastal wetlands on Earth. This means there are biologists, ecologists, wetland specialists, etc. as staff. The responsibility of the DEQ does not include economic analyses, investment information, or financial loan or capital assistance information. In fact, there is an entity full of economists, CPAs, etc. called the Michigan Economic Development Corporation designed to complete those very task. It is unrealistic and inappropriate to request a fiscal analysis from the DEQ staff.
- Application fee returned if permit is approved – first, the automotive approval should be removed from the bill per the above explanation and second, why would the Department return money for a permit that was approved? Refunds typically only apply for those applications that are denied or the timeline is missed and no answer is provided.
- Performance bond – end the sentence at “acceptable to the Department” rather than identify a number. Just as with other programs, each of these is site specific with different resources, techniques, and waterbodies. Therefore, it may be more appropriate that the performance bond be site-specific as well based upon the conditions of the site and the permit. A cap could be place upon the Department for how high of a performance bond could be requested.
- Stumpage value – the stumpage value should be based upon the fair market value, not an arbitrary percentage.

Conclusion

House Bill 4554 is not necessary in many instances, detrimental to health of Michigan’s water resources, and contains many provisions that are problematic. Given the potential damage and lack of interest when the activity was allowed, I, again, question the need for this legislation. As introduced, Tip of the Mitt Watershed Council opposes HB 4554. Should the committee wish to move forward with the bill, we would certainly recommend

making the changes above prior to doing so. However, we would recommend a workgroup be formed to determine if there is a need and, if there is, the best way to balance the interest in the activity with the potential adverse environmental effects. Tip of the Mitt would be willing to sit on a workgroup in attempt to work on changes to the bill.

On behalf of the board, staff, and members of Tip of the Mitt Watershed Council, thank you for the opportunity to share these thoughts with you.